

Office of the Principal Legal Advisor

U.S. Department of Homeland Security
500 12th Street, SW
Washington, D.C. 20536



**U.S. Immigration
and Customs
Enforcement**

April 16, 2019

Jeremy Singer-Vine
BuzzFeed News
111 East 18th Street, Newsroom
New York, New York 10003

RE: 2019-ICAP-00303, 2018-ICFO-55635

Dear Mr. Singer-Vine:

This is in response to your letter dated March 15, 2019 appealing the U.S. Immigration and Customs Enforcement (ICE) Freedom of Information Act (FOIA) Office's response to your FOIA request. Your FOIA request sought: all documents produced during modification of the Risk Classification Assessment which contain the words or phrases "Risk Classification Assessment," "RCA" or "algorithm."

A search of the ICE Office of Enforcement & Removal Operations (ERO) for records responsive to your request was conducted and produced 21 pages that were responsive to your request. On December 17, 2018, the ICE FOIA Office released 21 pages in entirety that were responsive to your request. Subsequently, you notified ICE FOIA through e-mail that you some pages you received were heavily redacted. In response to your e-mail, Enforcement and Removal Operations searched for an alternate copy of records without portions that were blacked out. On February 11, 2019 the ICE FOIA Office produced 5 pages of responsive records with portions withheld pursuant to Exemptions (b)(5), (b)(6), (b)(7)(C), (b)(7)(E) of the FOIA as described below.

By letter dated March 15, 2019, you are appealing the adequacy of the agency's search and the withholdings applied to the pages that were produced.

With respect to the withholdings, the ICE FOIA Office applied FOIA Exemption (b)(5) to protect from disclosure intra-agency documents that contain the recommendations, opinions, and conclusions of agency employees. The disclosure of these communications would discourage the expression of candid opinions and inhibit the free and frank exchange of information and opinions among agency personnel on important agency decision-making by having a chilling effect on the agency's deliberative process. The deliberative process privilege protects the integrity of the deliberative or decision-making processes within the agency by exempting from mandatory disclosure opinions, conclusions, and recommendations included within inter-agency or intra-agency memoranda or letters. The release of this internal information would discourage the expression of candid opinions and inhibit the free and frank exchange of information among agency personnel.

Exhibit H

Jeremy Singer-Vine
BuzzFeed News
2019-ICAP-00303, 2018-ICFO-55635
Page 2

The ICE FOIA Office also applied FOIA Exemptions (b)(6) and (b)(7)(C) to protect from disclosure the names, initials, room numbers, and other identifying information of DHS employees and third parties to prevent an unwarranted invasion of privacy. Without the explicit consent of the individual(s) named in the records you seek, ICE cannot release these records to you, your client, or any other member of the public. Protecting the privacy interests of individuals who may be named in ICE records which are the target of FOIA requests requires this procedure; members of the public may draw adverse inferences from the mere fact that an individual is mentioned in the files of a criminal law enforcement agency. The privacy interests of the individuals in the records you have requested outweigh any minimal public interest in the disclosure of the information.

Finally, the ICE FOIA Office applied FOIA Exemption (b)(7)(E) to protect from disclosure information compiled for law enforcement purposes, the release of which would disclose investigative techniques and procedures, such as investigative case numbers, case codes, law enforcement system information, internal agency law identification numbers which are not well known to the public and that if disclosed could reasonably be expected to risk circumvention of the law.

Upon a complete review of the information withheld by ICE in the initial determination on your FOIA request, the withholding of this information was proper in all respects, and the information is exempt from disclosure under the applicable provisions of 5 U.S.C. § 552 cited above.

Additionally, based upon a review of the administrative record, ICE has determined that new search(s) or, modifications to the existing search(s), could be made. Therefore, ICE is remanding your request to the ICE FOIA Office for processing and re-tasking to the appropriate agency/office(s) to obtain any responsive documents. The ICE FOIA Office will respond directly to you.

Should you have any questions regarding this appeal, please contact ICE at ice-foia@dhs.gov. In the subject line of the email please include the word "Appeal," the appeal number 2019-ICAP-00303 and the FOIA case number 2018-ICFO-55635.

Sincerely,

Alexandra Ellis

For: Shiraz Panthaky, Chief
Government Information Law Division
ICE Office of the Principal Legal Advisor
U.S. Department of Homeland Security